

August 10, 2010

Blaine F. Bates
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE RICK A. SANDOVAL,
Debtor.

BAP No. CO-10-012

CRYSTAL L. PEREA,
Plaintiff – Appellee,

Bankr. No. 08-30171
Adv. No. 09-01167
Chapter 7

v.

OPINION*

RICK A. SANDOVAL,
Defendant – Appellant.

Appeal from the United States Bankruptcy Court
for the District of Colorado

Before CORNISH, Chief Judge, THURMAN, and SOMERS, Bankruptcy Judges.

CORNISH, Chief Judge.

Debtor Rick A. Sandoval (“Sandoval”) appeals an order of the bankruptcy court granting judgment on the pleadings in favor of Crystal L. Perea (“Perea”).¹ The order granted Perea a monetary judgment in the amount of \$2,000 for costs associated with an allocation of parental rights case brought by Sandoval. We affirm the bankruptcy court’s order.

* This unpublished opinion may be cited for its persuasive value, but is not precedential, except under the doctrines of law of the case, claim preclusion, and issue preclusion. 10th Cir. BAP L.R. 8018-6.

¹ The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

I. BACKGROUND FACTS

Sandoval filed for Chapter 7 relief and Perea commenced this adversary proceeding seeking a monetary judgment as well as a determination of nondischargeability under 11 U.S.C. § 523(a)(5).² Perea sought a monetary judgment in the amount of \$2,000. That sum represents two items awarded to her by the state court in a parental rights case: 1) an attorney’s fee of \$1,000; and 2) \$1,000 for costs of a child and family investigator.³ After Sandoval filed an answer to the complaint,⁴ Perea filed a motion for judgment on the pleadings. Sandoval filed no response, and, therefore, the bankruptcy court granted Perea’s motion and entered judgment in her favor in the amount of \$2,000.⁵ Sandoval timely appealed the judgment.

II. APPELLATE JURISDICTION

This Court has jurisdiction to hear timely-filed appeals from “final judgments, orders, and decrees” of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal.⁶ Neither party elected to have this appeal heard by the United States District Court for the

² See *Plaintiff’s Motion for Judgment on the Pleadings*, in Appellant’s App. at 8.

³ *Id.*

⁴ See *Bankruptcy Docket Sheet No. 15*, in Appellant’s App. at 4.

⁵ *Order Re: Plaintiff’s Motion for Judgment on the Pleadings and Judgment*, in Appellant’s App. at 11-12. Neither the bankruptcy court’s order nor its judgment specifically state that the \$2,000 monetary judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(5). Additionally, Sandoval’s appendix on appeal is sparse—it contains neither the Complaint nor the Answer. However, the adversary proceeding is clearly one seeking a determination of nondischargeability and nothing in the record suggests that Sandoval disputes the issue of dischargeability. Only the amount of the monetary judgment is in contention.

⁶ 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-3.

District of Colorado. The parties have therefore consented to appellate review by this Court.

A decision is considered final “if it ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’”⁷ In this case, the bankruptcy court’s order granting a money judgment in favor of plaintiff is final for purposes of review.

III. STANDARD OF REVIEW

A judgment on the pleadings rendered pursuant to Federal Rule of Civil Procedure 12(c) is reviewed *de novo*,⁸ applying the same legal standard used by the bankruptcy court. A judgment may not be granted under Rule 12(c) unless the movant clearly establishes that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law.⁹ When reviewing the granting of a Rule 12(c) motion, an appellate court must view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party.¹⁰

IV. ANALYSIS

The record on appeal is sparse, and Sandoval’s briefs are abbreviated and incoherent. Having looked to Perea’s appellate brief for additional assistance in understanding the nature of Sandoval’s argument on appeal, this is what we are

⁷ *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

⁸ *Bixler v. Foster*, 596 F.3d 751, 755 n.2 (10th Cir. 2010). *Bixler* involved a defendant’s motion for judgment on the pleadings and the Tenth Circuit stated that the standard of review for judgment granted under Rule 12(c) is the same as the standard for Rule 12(b)(6). Additionally, in the case on appeal, the plaintiff’s motion is similar to a summary judgment motion without evidence under Rule 56(a) which is also reviewed *de novo*.

⁹ *Rosenau v. Unifund Corp.*, 539 F.3d 218, 221 (3d Cir. 2008) (quoting *Jablonski v. Pan Am. World Airways, Inc.*, 863 F.2d 289, 290-91 (3d Cir. 1988)).

¹⁰ *Id.*

able to ascertain. First, Sandoval complains that the judgment was entered without a trial.¹¹ Second, he asserts that he has paid Perea \$1,500 towards the judgment, and asks that we “dismiss the remaining balance and close the case” because he does not owe the additional \$500.¹² He disputes he owes the \$500 balance because he alleges Perea did not actually pay her fee to the child and family investigator.¹³ To support this argument, he submitted a letter from the investigator with his response to a notice of deficiency issued by this Court regarding proof of service of his statement of interested parties.¹⁴

Sandoval’s argument that the judgment should not have been entered without a trial has no merit. Perea filed her motion for judgment on the pleadings and Sandoval failed to respond. Thus, he was in default.¹⁵ Additionally, Sandoval’s second argument that the amount of the judgment is incorrect is not reviewable. This argument and supporting evidence were not first tendered to the bankruptcy court for consideration. It is well established that an appellate court will not consider an issue that was not first presented to the trial court.¹⁶ Thus, this Court declines to review the alleged error regarding the amount of the judgment.¹⁷

¹¹ Appellant’s Reply Brief at 1, ¶ 4.

¹² *Id.* at 2.

¹³ *See* Appellant’s Reply Brief at 1 and Appellee’s Brief at 1-2.

¹⁴ *See Docket No. 65361* at 8.

¹⁵ *See Colorado Local Bankruptcy Rule 202(c), Notice and a Hearing; Opposition and Request for Hearing* (1999) (“Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to granting of the motion or the action to be taken.”).

¹⁶ *Employers Reins. Corp. v. Mid-Continent Cas. Co.*, 358 F.3d 757, 769 (10th Cir. 2004).

¹⁷ In her brief, Perea seeks an award of attorney fees and costs on the ground that Sandoval’s appeal is “frivolous and groundless.” In order to provide

(continued...)

V. CONCLUSION

The order and judgment of the bankruptcy court are affirmed.

¹⁷ (...continued)
adequate notice, Federal Rule of Bankruptcy Procedure 8020 requires that such a request be made by a separately filed motion, not in a brief. Perea's request is therefore denied.